

Before the
COPYRIGHT ROYALTY JUDGES
Library of Congress
Washington, D.C.

In the Matter of
Distribution of the 2014-2017
Satellite Royalty Funds

)
)
) **DOCKET NUMBER 16-CRB-0010-SD**
) **(2014-17)**
)

**JOINT COMMENTS OF 2014-17 SATELLITE PARTICIPANTS
ON ALLOCATION PHASE CLAIMANT CATEGORY DEFINITIONS**

The undersigned parties (“2014-17 Satellite Participants”) submit the following joint comments in response to the Copyright Royalty Judges’ (“Judges”) “Notice of Participants and Order for Preliminary Action to Address Categories of Claims” (dated March 20, 2019) (“Notice”). The Notice states that the Judges intend “to formalize the definitions of claimant categories for purposes of initial allocation of funds.” *Id.* at 2. It invites “briefing by any party in interest regarding proposed claimant category definitions.” *Id.* at Exhibit B. It also notes that “Issues may include appropriateness of previously used program category definitions and disputes regarding categorization of particular programs included within a category” and that “[i]f a proposed classification is ambiguous, participants may propose additional categories.” *Id.*

The 2014-17 Satellite Participants urge the Judges to adopt the Allocation Phase categories and program category definitions set forth in Appendix A attached hereto for purposes of the 2014-17 Satellite Royalty Distribution proceeding. These categories and definitions, which are mutually exclusive and cover all eligible copyrighted works on distant signals, are

identical to those used in the 2010-2013 Satellite Royalty Distribution proceeding,¹ under which all parties are currently operating. These definitions are themselves based on definitions used in prior Cable proceedings, but limited to only the five categories that may be at issue in Satellite proceedings.

Using these longstanding category definitions has the substantial benefit of providing efficiency and certainty both in the preparation of evidence for royalty distribution proceedings and in the ultimate distribution of royalties to all eligible claimants. For example, in the 2010-2013 cable proceedings, which involved the allocation and distribution of over \$775 million in royalties, no disputes ultimately needed to be resolved by the Judges regarding the categorization of any of the millions of programs at issue across the allocation-phase categories.² Moreover, over 99 percent of the 2010-2013 cable royalties³ are being distributed by the participating allocation-phase parties to their claimants without presenting any distribution-phase disputes for resolution by the Judges.

The definitions are the product of years of experience in royalty distribution proceedings, as well as prior rulings of the Copyright Royalty Tribunal determining the proper categorization

¹ *Amended Notice of Participant Groups, Commencement of Voluntary Negotiation Period (Allocation), and Scheduling Order*, Docket No. 14-CRB-0011-SD (Dec. 1, 2015), at Exhibit A.

² *See Distribution of Cable Royalty Funds*, 84 Fed. Reg. 3552 (Feb. 12, 2019) (“*2010-13 Cable Determination*”) at 3598-99 (no material impact created by marginally differing program categorizations), 3589-91 (Program Suppliers’ addition of an entirely new category without evidence to support its allocation among the agreed categories was “even more problematic,” and was resolved by allocating the new category’s results proportionally).

³ Distribution-phase disputes raised by Multigroup Claimants (“MCG”) resulted in awards of an aggregate total of only between 0.6% and 1.1% of the total Basic royalties across the four years. *Compare Final Determination Regarding Distribution of Royalties for Claimants in Devotional Category*, Docket No. 14-CRB-0010-SD/CD (Jul. 18, 2018) at 2 and *Final Determination Regarding Distribution of Cable and Satellite Royalties in Program Suppliers Category*, Docket No. 14-CRB-0010-SD/CD (Oct. 1, 2018) at 2 (setting forth MCG Distribution shares of the Devotional and Program Suppliers allocation shares, respectively), *with 2010-13 Cable Determination* at 3611 (setting forth Basic allocation shares for Program Suppliers and Devotional categories).

of various programs and types of programs,⁴ and prior determinations of a Copyright Arbitration Royalty Panel, the Copyright Office, and the Court of Appeals.⁵ These prior decisions are significant because they represent not merely the status quo but the substantive development of a long succession of determinations and clarifications regarding categorization, especially in the early days of the distribution proceedings, which provided the foundation for the predictability and efficiency we see today with respect to the vast majority of the royalty funds.

At the outset of the 2003 cable royalty distribution proceeding, the Judges requested “comment on whether the current categories of Phase I claimants fairly represent the interests of all claimants or whether additional categories of claimants should be recognized.” *See* Order Granting Partial Distribution of 2003 Cable Royalty Fund at 3, Docket No. 2005-4 CRB CD 2003 (January 23, 2008). After considering extensive comments on the issue, the Judges made no changes to the existing Phase I categories and definitions. *Id.* They properly rejected one party’s proposal to redefine the traditional categories by creating a new Spanish-language category, concluding that retaining the longstanding categories was necessary “in the interests of promoting certainty and future settlements.” *Id.* That conclusion applies equally to the 2014-2017 category definitions.

⁴ *See, e.g., 1978 Cable Royalty Distribution Determination*, 45 Fed. Reg. 63,026, 63,042 (Sept. 23, 1980); *1979 Cable Royalty Distribution Proceeding*, 46 Fed. Reg. 24,619, 24,619 (May 1, 1981); *1979 Cable Royalty Distribution Determination*, 47 Fed. Reg. 9,879, 9,897 (Mar. 8, 1982); *1980 Cable Royalty Distribution Determination*, 48 Fed. Reg. 9,552, 9,561 (Mar. 7, 1983); *1983 Cable Royalty Distribution Proceeding*, 51 Fed. Reg. 12,792, 12,799 (Apr. 15, 1986); *1984 Cable Royalty Distribution Proceeding*, 52 Fed. Reg. 8,408, 8,416 (Mar. 17, 1987); *Notice Commencing 1984 Cable Distribution Proceeding*, 51 Fed. Reg. 21,587 (June 13, 1986); *1984 Cable Royalty Distribution Proceeding*, Advisory Opinion (CRT May 16, 1986).

⁵ *See Distribution of 1990, 1991, and 1992 Cable Royalties*, 61 Fed. Reg. 55,653, 55,655 (Oct. 28, 1996); *Nat’l Ass’n of Broadcasters v. Librarian of Congress*, 146 F.3d 907, 913-14 and nn.1, 2 (D.C. Cir. 1998).

CONCLUSION

For the reasons stated above, the 2014-17 Satellite Participants urge the Judges to adopt the Allocation Phase categories and program category definitions set forth in Appendix A hereto for purposes of the 2014-17 Satellite Royalty Distribution proceeding.

Respectfully submitted,

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APPENDIX A

PROGRAM CATEGORY DEFINITIONS

"Commercial Television Claimants." Programs produced by or for a U.S. commercial television station and broadcast only by that station during the calendar year in question, except those listed in subpart 3) of the Program Suppliers category.

"Devotional Claimants." Syndicated programs of a primarily religious theme, but not limited to programs produced by or for religious institutions.

"Music Claimants." Musical works performed during programs that are in the following categories: Program Suppliers, Joint Sports Claimants, Commercial Television Claimants, and Devotional Claimants.

"Joint Sports Claimants." Live telecasts of professional and college team sports broadcast by U.S. television stations.

"Program Suppliers." Syndicated series, specials and movies, except those included in the Devotional Claimants category. Syndicated series and specials are defined as including (1) programs licensed to and broadcast by at least one U.S. commercial television station during the calendar year in question, (2) programs produced by or for a broadcast station that are broadcast by two or more U.S. television stations during the calendar year in question, and (3) programs produced by or for a U.S. commercial television station that are comprised predominantly of syndicated elements, such as music videos, cartoons, "PM Magazine," and locally-hosted movies.

Proof of Delivery

I hereby certify that on Friday, April 19, 2019 I provided a true and correct copy of the Notice to the following:

Global Music Rights, LLC, represented by Scott A Zebrak served via Electronic Service at scott@oandzlaw.com

circle god network inc d/b/a david powell, represented by david powell served via Electronic Service at davidpowell008@yahoo.com

Program Suppliers, represented by Gregory O Olaniran served via Electronic Service at goo@msk.com

Multigroup Claimants, represented by Brian D Boydston served via Electronic Service at brianb@ix.netcom.com

Major League Soccer, L.L.C., represented by Edward S. Hammerman served via Electronic Service at ted@copyrightroyalties.com

Signed: /s/ Ann Mace